

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN)
AMERICAN CITIZENS, SOUTHWEST)
VOTER REGISTRATION EDUCATION) CIVIL ACTION NO.
PROJECT, MI FAMILIA VOTA,) 3:21-cv-00259-DCG-JES-JVB
AMERICAN GI FORUM, LA UNION DEL) [Lead case]
PUEBLO ENTERO, MEXICAN)
AMERICAN BAR ASSOCIATION OF)
TEXAS, TEXAS HISPANICS)
ORGANIZED FOR POLITICAL)
EDUCATION, WILLIAM C. VELASQUEZ)
INSTITUTE, FIEL HOUSTON INC.,)
TEXAS ASSOCIATION OF LATINO)
ADMINISTRATORS AND)
SUPERINTENDENTS, PROYECTO)
AZTECA, REFORM IMMIGRATION FOR)
TEXAS ALLIANCE, WORKERS)
DEFENSE PROJECT, EMELDA)
MENENDEZ, GILBERTO MENENDEZ,)
JOSE OLIVARES, FLORINDA CHAVEZ,)
JOEY CARDENAS, PAULITA SANCHEZ,)
JO ANN ACEVEDO, DAVID LOPEZ,)
DIANA MARTINEZ ALEXANDER, and)
JEANDRA ORTIZ,)

Plaintiffs,

V.

GREG ABBOTT, in his official capacity as Governor of the State of Texas; JOSE A. ESPARZA, in his official capacity as Deputy Secretary of the State of Texas,

Defendants.

VOTO LATINO, ROSALINDA RAMOS

ABUABARA, AKILAH BACY,
ORLANDO FLORES, MARILENA
GARZA, CECILIA GONZALES,
AGUSTIN LOREDO, CINIA MONTOYA,
ANA RAMÓN, JANA LYNNE SANCHEZ,
JERRY SHAFER, DEBBIE LYNN SOLIS,
ANGEL ULLOA, and MARY URIBE,

Plaintiffs,

v.

JOHN SCOTT, in his official capacity as
Texas Secretary of State, and GREGORY
WAYNE ABBOTT, in his official capacity
as the Governor of Texas,

Defendants.

MEXICAN AMERICAN LEGISLATIVE
CAUCUS, TEXAS HOUSE OF
REPRESENTATIVES,

Plaintiffs,

v.

STATE OF TEXAS, GREG ABBOTT,
GOVERNOR OF THE
STATE OF TEXAS, in his official capacity,
and JOHN SCOTT, SECRETARY OF
STATE OF TEXAS, in his official capacity,

Defendants.

ROY CHARLES BROOKS, FELIPE
GUTIERREZ, PHYLLIS GOINES, EVA
BONILLA, CLARA FAULKNER,
DEBORAH SPELL, and BEVERLY
POWELL,

Plaintiffs,

) CIVIL ACTION NO.
) 1:21-cv-00965-RP-JES-JVB
) [Consolidated case]

) CIVIL ACTION NO.
) 1:21-cv-00988-RP-JES-JVB
) [Consolidated case]

) CIVIL ACTION NO.
) 1:21-cv-0099-LY-JES-JVB
) [Consolidated case]

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; JOHN SCOTT, in his
official capacity as Secretary of State of
Texas,

Defendants.

TEXAS STATE CONFERENCE OF
THE NAACP,

Plaintiff,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; JOHN SCOTT, in his
official capacity as Secretary of State of
Texas,

Defendants.

FAIR MAPS TEXAS ACTION
COMMITTEE, OCA-GREATER
HOUSTON, NORTH TEXAS CHAPTER
OF THE ASIAN PACIFIC ISLANDER
AMERICANS PUBLIC AFFAIRS
ASSOCIATION, EMGAGE, KHANAY
TURNER, ANGELA RAINEY, AUSTIN
RUIZ, AYA ENELI, SOFIA SHEIKH,
JENNIFER CAZARES, NILOUFAR
HAFIZI, LAKSHMI RAMAKRISHNAN,
AMATULLA CONTRACTOR, DEBORAH
CHEN, ARTHUR RESA, SUMITA
GHOSH, and ANAND KRISHNASWAMY,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; JOHN SCOTT, in his
official capacity as Secretary of State of
Texas,

CIVIL ACTION NO.
1:21-cv-01006-RP-JES-JVB
[Consolidated case]

CIVIL ACTION NO.
1:21-cv-01038-RP-JES-JVB
[Consolidated case]

Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TEXAS and JOHN SCOTT, in
his official capacity as Texas Secretary of
State,

Defendants.

CIVIL ACTION NO.
3:21-cv-00299-RP-JES-JVB
[Consolidated case]

DAMON JAMES WILSON, for himself and
on behalf of others similarly situated,

Plaintiff,

v.

THE STATE OF TEXAS, et al.,

Defendants.

CIVIL ACTION NO.
1:21-cv-00943-RP-JES-JVB
[Consolidated Case]

TREY MARTINEZ FISCHER, Texas State
Representative (HD 116),

Plaintiff,

v.

GREG ABBOTT, in his official capacity as
Governor of the State of Texas; JOHN
SCOTT, in his official capacity as Secretary
of the State of Texas,

Defendants.

CIVIL ACTION NO.
3:21-cv-00306-DCG-JES-JVB
[Consolidated Case]

PLAINTIFFS' PROPOSED SCHEDULING ORDER

Plaintiffs submit this response to the Court's December 8, 2021 Order Requiring Parties to File a Proposed Scheduling Order, ECF No. 75. After multiple conferences in good faith, the parties have been unable to reach agreement on proposed dates except as to the preliminary injunction motion. Plaintiffs therefore file this Proposed Scheduling Order, which represents Plaintiffs' position on an appropriate schedule for this case.

The key components of Plaintiffs' proposed schedule are the following:

- No preliminary injunction motions other than the one previously filed by the *Brooks* Plaintiffs. After considering the scheduling and timing issues discussed at the December 7 conference, and in the interest of allowing for a prompt resolution of the ultimate merits of their claims, Plaintiffs in the other cases have decided not to move for preliminary relief.
- A Rule 26(f) Conference next week, to allow for the immediate start to discovery on the merits. The Court expressed surprise at the December 7 conference that discovery had not already begun. Plaintiffs agree that discovery should begin immediately, particularly with only a single, relatively narrow motion for preliminary relief pending. Defendants' counsel refused to provide availability for a Rule 26(f) conference before January 7, 2022. Plaintiffs are willing to accommodate Defendants' counsel's schedule within reason, but they believe that the conference should be held next week so that discovery on the merits can begin.
- Trial commencing October 3, 2022, or October 11, 2022, and in any event early enough to allow for completion of trial before Election Day on November 8, 2022. At the December 7 conference, both parties referred to a December 2022 trial. But the Court expressed concern about whether that schedule would allow for sufficient time for adjudication of this matter before the start of the Texas Legislature's 88th regular session in January 2023. On reflection, Plaintiffs agree with that concern. Plaintiffs also believe that by declining to seek additional preliminary relief and by proposing to commence discovery immediately in accordance with the schedule proposed herein, an early October trial date becomes possible.

Based on the parties' conferrals, Plaintiffs believe that Defendants will propose a trial starting on November 10, 2022. Plaintiffs are concerned that such a start date may still be too late to allow resolution sufficiently before the start of the Legislature's 88th regular session, particularly considering the November and December holidays. Plaintiffs are also concerned about

a trial immediately after Election Day, because significant portions of Plaintiffs' claims involve the close analysis of election results, and a November 10 trial would come before complete precinct level results are available, much less analyzed, but after overall results are available, injecting confusion into the factual record. Plaintiffs believe that a pre-Election Day trial coupled with an opportunity for supplemental briefing and judicial notice regarding the results of the November 2022 election (as Plaintiffs propose below) is a better way to handle that issue.

If the Court decides to set trial for November or later, however, Plaintiffs request that the Court correspondingly extend the close of discovery and other deadlines from the dates proposed below. During the parties' conferrals, Defendants proposed to close discovery on August 5, 2022, even though on Defendants' schedule, trial would not start until November 10. Plaintiffs do not believe this is reasonable. While Plaintiffs are willing to accept a more compressed discovery schedule in exchange for an October trial date, if trial will not occur until later, the discovery period should remain open longer.

The text that follows is based on the Court's December 8 Order, with additions underlined and deletions shown stricken out, and with a brief explanation following certain items. A clean proposed order is attached as **Exhibit A**.

Preliminary Injunction Schedule

1. All motions for a preliminary injunction shall be filed by **December 13, 2021**. The Brooks Plaintiffs have filed their Motion for Preliminary Injunction. No other party intends to file a Motion for Preliminary Injunction. Responses to a motion for preliminary injunction are due **December 20, 2021** ~~days after such a motion is filed.~~ Replies are due **December 23, 2021** ~~days after the deadline to file a response.~~

EXPLANATION: The parties are in agreement on these dates, which are from the Court's December 7 Order setting a briefing schedule for the *Brooks* Plaintiffs' Preliminary Injunction Motion, ECF No. 70.

2. If the parties intend on calling expert witnesses at a preliminary injunction hearing, then all parties asserting claims for relief shall **FILE** their designation of potential witnesses, designation of testifying experts, and list of proposed exhibits, and shall **SERVE** on all parties, but not file the material required by Federal Rule of Civil Procedure 26(a)(2)(B) by **January 7, 2022**. Parties resisting claims for relief shall **FILE** their designation of potential witnesses, designation of testifying experts, and list of proposed exhibits, and shall **SERVE** on all parties, but not file the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) by **January 14, 2022**. All designations of rebuttal experts shall be **FILED** no later than **January 19, 2022**. Parties are not required to list exhibits they intend to use for impeachment purposes.

EXPLANATION: The parties are in agreement on this schedule.

3. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion specifically stating the basis for the objection and identifying the objectionable testimony, not later than **14** days of receipt of the written report of the expert's proposed testimony, or not later than **7** days of the expert's deposition, if a deposition is taken, whichever is later.

EXPLANATION: The parties are in agreement on this schedule.

4. The parties shall complete all discovery related to motions for a preliminary injunction by **January 21, 2022**. For purposes of the preliminary injunction hearing scheduled on January 25, 2022, the *Brooks* Plaintiffs and the State Defendants agree to deposition limitations of 5 depositions per side during the discovery period outlined above and no written discovery for purposes of the preliminary injunction, other than subpoenas to third parties. The parties agree that if necessary due to significant scheduling impediments, that depositions in lieu of live testimony for unavailable witnesses may be taken by agreement and reasonable advance notice between January 19 and January 24th.

EXPLANATION: The parties are in agreement on this schedule and these provisions to govern discovery relating to the *Brooks* Plaintiffs' Preliminary Injunction Motion.

Trial Schedule

1. The parties shall conduct their Rule 26(f) conference no later than **December 21, 2021**.

EXPLANATION: Plaintiffs believe that discovery should commence immediately.

2. Initial disclosures required by Rule 26(a) shall be exchanged no later than **January 4, 2022**.

EXPLANATION: This is 14 days after the proposed Rule 26(f) conference, in accordance with Federal Rule of Civil Procedure 26(a)(1)(C).

3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by **May 2, 2022**.

EXPLANATION: Plaintiffs believe that the parties agree on this date.

4. All parties asserting claims for relief shall **FILE** their ~~designation of potential witnesses, designation of testifying experts, and list of proposed exhibits,~~ and shall **SERVE** on all parties, but not file the material required by Federal Rule of Civil Procedure 26(a)(2)(B) by **June 1, 2022**. Parties resisting claims for relief shall **FILE** their ~~designation of potential witnesses, designation of testifying experts, and list of proposed exhibits,~~ and shall **SERVE** on all parties, but not file the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) by **July 1, 2022**. All designations of rebuttal experts shall be **FILED**, and both rebuttal reports and reports of rebuttal experts, along with associated materials required by Federal Rule of Civil Procedure 26(a)(2)(B), shall be SERVED, no later than **July 15, 2022**.

EXPLANATION: The parties agree that disclosures of expert witnesses should be separated from, and set earlier than, disclosures of fact witnesses and proposed exhibits. Plaintiffs have therefore modified this paragraph to address expert witnesses only. This schedule allows sufficient time for depositions to be taken of experts after rebuttal reports are served but before the close of discovery.

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion specifically stating the basis for the objection and identifying the objectionable testimony, not later than **August 22, 2022** ~~days of receipt of the written report of the expert's proposed testimony, or not later than ___ days of the expert's deposition, if a deposition is taken, whichever is later.~~ Any responses to such objections shall be filed by **September 12, 2022**.

EXPLANATION: Plaintiffs propose these deadlines to correspond with the deadlines for dispositive motions.

6. The parties shall complete all discovery on or before **August 5, 2022**. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

EXPLANATION: Plaintiffs propose this deadline based on their proposal of an early October trial date. If the Court were to order a later trial date, Plaintiffs request that the Court correspondingly extend the discovery period, and the other deadlines.

7. All dispositive motions shall be filed no later than **August 22, 2022**. Responses to dispositive motions shall be due no later than **September 12, 2022**. Replies in support of dispositive motions shall be due no later than **September 21, 2022**.

EXPLANATION: These deadlines are intended to provide sufficient time for the parties to brief dispositive motions following the close of discovery. If the Court desires additional time between the filing of dispositive motions and the start of trial, Plaintiffs request that the court move all three of these dates earlier, while keeping the same number of days between them and the trial date the same.

8. The parties will exchange and file the pretrial disclosures required by Federal Rule of Civil Procedure 26(a)(3) no later than 14 days before trial.

EXPLANATION: Plaintiffs propose adding this paragraph to address the timing of the disclosure of “may call” and “will call” fact witnesses and proposed exhibits, which Plaintiffs proposed removing from paragraph 4 above.

9. Trial will begin on **October 3, 2022** or **October 11, 2022**, and in any event, on a date that will allow for completion of trial before November 8, 2022.

EXPLANATION: An early October 2022 trial would allow sufficient time for resolution of the case before the Texas Legislature’s 88th regular session begins on January 10, 2023.

10. The parties may supplement the trial evidence with data from the November 8 election that is subject to judicial notice, and briefing on such data’s legal significance, by **November 22, 2022**.

EXPLANATION: If one or more of the Parties believes the November 8 election results are relevant to their claims, this deadline allows for that party to bring the official results to the Court’s attention, and provide an explanation of their relevance.

Dated: December 15, 2021.

Respectfully submitted,

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